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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.R.C.No.171 of 2015

R.Ramachandran

... Petitioner/ Respondents

Vs.

1. V.T.Sujatha

2. Minor. Vedhavarshini
Represented by mother and
natural guardian
V.T.Sujatha

... Respondents/Petitioners

Prayer:

Petition filed under Section 397 r/w. 401 of Cr.P.C., seeking to call for the records in M.C.No.4 of 2013 on the file of the Judicial Magistrate - 1, Sankari and set aside the order dated 21.01.2015 passed therein.

For Petitioner : Mr.K.Shivakumar
Legal Aid Counsel

For Respondent : Mr.R.Balakrishnan

O R D E R

The petitioner has filed this petition seeking to set aside the order dated 21.01.2015 passed in M.C.No.4 of 2013 by the learned Judicial Magistrate - 1, Sankari.

2.The case of the petitioner is that the marriage between the petitioner and the first respondent was solemnized on 13.06.2005 at Salem and out of the wedlock, the second respondent was born. The petitioner filed petition seeking divorce in H.M.O.P.No.33 of 2006 before the I Additional Subordinate Court, Salem and the same was allowed on 06.09.2012



and the marriage was dissolved on the ground of cruelty. Aggrieved by the same, the first respondent filed C.M.A.No.63 of 2012 before the Principal District Munsif Court and the said appeal was dismissed on 21.02.2014.

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3.It is the further case of the petitioner that the respondents had filed M.C.No.04 of 2013 before the Judicial Magistrate - 1, Sankari, seeking a sum of Rs.5,000/- per month towards maintenance for the first respondent and a sum of Rs.4,000/- per month towards maintenance for the second respondent and the Judicial Magistrate-1, Sankari, vide order dated 21.01.2015, awarded a sum of Rs.2,500/- each per month towards maintenance. Aggrieved by the same, the petitioner has filed this revision.

4.The learned legal aid counsel appearing for the petitioner would submit that the marriage between the petitioner and the first respondent was solemnized on 13.06.2005, however, the first respondent deserted the petitioner within 28 days from the date of marriage without offering any justifiable reasons. Hence, claiming maintenance is not sustainable as per Section 125 (4) of Cr.P.C. He would further submit that the first respondent wilfully refused to live with the petitioner and that itself is sufficient to deny maintenance. Accordingly, he prayed for allowing the revision.

5.The learned counsel appearing for the respondents would submit that the relationship of the petitioner and the respondents are not disputed. Only if divorce is granted on the ground of adultery or wilfully refused to live, maintenance can be denied. In the present case, divorce was granted in favour of the petitioner only on the ground of cruelty. Hence, grant of maintenance to the respondents cannot be denied. Further, the first respondent is unemployed has to take care of herself and the daughter, hence, the order passed by the lower Court warrants no interference. Accordingly, he prayed for the dismissal of the revision.

6.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents.

7.The facts in the case is not disputed. Admittedly, the marriage between the petitioner and the respondent was solemnized on 13.06.2005 at Salem and out of the wedlock, the second respondent was born. The petitioner filed petition seeking divorce in H.M.O.P.No.33 of 2006 before the I Additional Subordinate Court, Salem and the same was allowed on 06.09.2012 and the marriage was dissolved on the ground of cruelty.

8.For better appreciation, the relevant portion of Section



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125 of Cr.P.C. is extracted hereunder:

"125. Order for maintenance of wives, children and parents, (1) If any person having sufficient means neglects or refuses to maintain— (a) his wife, unable to maintain herself, or (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or (d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means

.....
(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent"

9.As per Section 125 (4) of Cr.P.C., no wife shall be entitled to receive an allowance from her husband if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent. In the present case, the marriage was dissolved only on the ground of cruelty. Hence maintenance cannot be denied to the respondents. Hence, this Court is not inclined to interfere with the order dated 21.01.2015 passed in M.C.No.4 of 2013 by the learned Judicial Magistrate - 1, Sankari.



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10. This revision is accordingly dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate - 1,
The Judicial Magistrate Court,
Sankari.
2. The I Additional Subordinate Judge,
The I Additional Subordinate Court,
Salem.
3. The Principal District Munsif Judge,
The Principal District Munsif Court,
Salem.

+1cc to Mr.R.Balakrishnan, Advocate, S.R.No.40458
+1cc to Mr.K.Shivakumar, Advocate, S.R.No.40236

Cr1.R.C.No.171 of 2015

SRA (CO)
CT(17/09/2021)